IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3216 of 2007()

ST.384/2005 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE

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PETITIONER: ACCUSED

SUBASH ACHANATH, AGED 34 YEARS,
SON OF P.MOHANDAS, KRISHNA VIHAR,
PUTHUPARIYARAM, PALAGHAT-678 733.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS: COMPLAINANT

1. GOPINATH.T., SON OF UNNERI,
3/1216 A, SINDHOOR, GANDI ROAD,
NADAKKAVU P.O., CALICUT-673 011.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. JIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 3216 Of 2007

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Dated this the 18th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act. Cognizance has already been taken. The petitioner has not entered appearance so far before the learned Magistrate. Warrant of arrest issued by the learned Magistrate is chasing the petitioner.

2. The petitioner has a very sad tale of woes to narrate. According to the petitioner, the petitioner has grave financial difficulties. In spite of that, after cognizance was taken the petitioner had allegedly paid the entire amount due to the complainant. The complainant, it is submitted, had offered to withdraw/compound the case if the entire amount were paid. Accordingly the amount was allegedly paid. But the complainant is not now withdrawing the complaint. To vex and harass the petitioner he is continuing with the prosecution. In these circumstances, the complainant may be permitted to withdraw/compound the case or the case against the petitioner may be quashed. This in short is the prayer.

3. The prayer cannot obviously to be accepted. The subsequent discharge of the civil liability cannot and does not obliterate the

culpable liability under Section 138 of the Negotiable Instrument Act. Except oral assertion of a probable settlement before payment is effected, there is nothing tangible to indicate such prior agreement. According to the petitioner, as per Annexure A3 and A4 demand drafts the entire amount of Rs. 1,60,000/- due under the cheque has been paid to the complainant. He has encashed the same also, it is submitted. A further amount of Rs.5,000/- has already been allegedly paid by demand draft, submits the learned counsel for the petitioner. In spite of this, warrant of arrest issued by the learned Magistrate is chasing the petitioner and the petitioner submits that this amounts to abuse of process of the Court.

4. If prima facie there is material to show that offence has been committed, refusal to withdraw/compound the case would certainly not give rise to any rights in favour of the inductee. However, I take note of the submissions and materials produced, I am satisfied that this is an eminently fit case where the learned Magistrate must permit the petitioner to appear through counsel in the trial after exempting him from personal appearance under Section 205 Cr.P.C.

5. In the result, this Crl.M.C. is allowed in part. The following directions are issued.

i) The warrant of arrest issued against the petitioner shall not be

executed till 5.11.07.

ii) The petitioner can on or before 5.11.07 appear before the learned Magistrate and claim exemption from personal appearance under Section 205 Cr.P.C. The learned Magistrate shall exempt the petitioner from personal appearance and shall not insist on the personal presence of the petitioner, if he is represented by a counsel unless there are compelling reasons.

(R.BASANT, JUDGE)

sj